#

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4412 OF 2006

Ajij Rehman Pathan .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.R.D.Suryavanshi for applicant

Mr.Rajesh More, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th December 2006

P.C.

. The applicant is 73 year old person and presently arrested in connection with C.R.No.II-44 of 2006 by Bazarpeth Police Station

alleging offences under sections 20, 27 and 29 of N.D.P.S. Act.

2. Applicant has been arrested because of the complaint lodged by one Hasrat Gafur Tadavi, Police Constable attached to this police station in respect of recovery of 46 gms. and 310 ml. Ganja at about 10.50 p.m.

3. The co-accused Pralhad Chavan and Sharad Pandit were apprehended by the said constable and their search revealed that Ganja was stored in the dicky of Bajaj Chetak Scooter plied by them. Later on it is revealed that the alleged Ganja was sold by Applicant to these co-accused. Applicant was, therefore, arrested and detained in custody.

4. His application for bail has been rejected by the learned Judge taking N.D.P.S. Cases on the ground that the applicant is also an accused in C.R.No.II-107 of 2006 registered with

Shantinagar Police Station. There, the recovery was of 11 Kg. of Ganja and, therefore, applicant being habitual offender and dealing with Ganja, he does not deserve to be enlarged on bail.

5. In response to the averment at page 6 ground (C) of this application, I had called upon the learned A.P.P. to file an affidavit. The affidavit has been filed in which a contention is raised that the applicant is supplier of contraband and is the main brain behind dealings and if he is released on bail, he will resume his activities in future. The entire case set out in the affidavit is with regard to the allegations in the C.R. registered with Shantinagar Police station. The recovery that is referred to is also in that case. Insofar as arrest under the present C.R. is concerned, neither the contents of the application are dealt with nor are they denied. It is not disputed before me that the recovery in this case is only 46 gms. and 310 mg. of Ganja. In other words, the case set up

that the offence will be covered by section 20(b)(ii)(A) of N.D.P.S. Act is not denied.

6. The argument of the learned A.P.P. is that the conclusion of trial judge that applicant has been enlarged on bail in the Shantinagar case is of no assistance to the applicant in the subject C.R. because there bail was granted in deault of filing of charge sheet within requisite period. It is not an order on merits.

7. The prosecution as well as learned Special Judge seem to be unaware of Section 37 of N.D.P.S. Act. The said section reads thus:-

> "37. Offences to be cognisable and non-bailable:- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) :-
>
> (a) every offence punishable under this Act shall be

cognisable;

(b) no person accused of an offence punishable for offences under section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity or more under this Act shall be released on bail or on his own bond unless:-

(i) the Public Prosecutor has been given an opportunity to oppose the application of such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such

offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of Sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting bail."

8. A bare perusal of this section would reveal that notwithstanding anything contained in the Cr.P.C. no person accused of offences punishable for offences punishable under section 19 or 24 or or 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless the stipulations in (i and (ii) (b) of Sub-section 1 of Section 37 are satisfied. It has not been brought to my notice that all these

pre-requisites need to be satisfied by the applicant for being enlarged on bail. If the quantity is lesser than smaller quantity, then there is no question of the applicant being denied bail. The learned A.P.P. could not dispute this legal position in the light of the present facts.

9. In my view, above vital aspects of the case being ignored and the learned Special Judge approaching the case on altogether different grounds and taking assistance of the allegations in some other special case, the order passed on 28th November 2006 deserves to be quashed and set aside. The application needs to be decided on the touchstone of the mandate of above provisions and whether in the subject C.R., the applicant is guilty of the offences alleged. It is not pointed out to me how the applicant already enlarged on bail in the other case and that order being not allegedly on merits, disentitles applicant from being enlarged on bail in the

present case.

10. Last but not the least, the stringent provisions of N.D.P.S. Act makes out a case for all concerned to act with greater responsibility and seriousness. The nature of the offences under the Act, the purpose and object sought to be achieved by the enactment are vital aspects. They have to be balanced with the right of a person to life and liberty. Even the stringent provisions do not take away ones liberty altogether as has been observed by the Supreme Court time and again. In the result, application succeeds. Hence following order:-

i) The applicant arrested in connection with C.R.No.II-44 of 2006 registered with Bazarpeth Police Station shall be enlarged on bail in the sum of Rs.25,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer of Bazarpeth police station once a week on every Saturday between 5.00 p.m. and 7.00 p.m. till conclusion of the trial.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any

inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)